

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

92-CR-68-C-01

DAVID SEVERSON,

Defendant.

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A hearing on the revocation of David Severson's supervised release was held in this case on August 7, 2003, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Robert A. Anderson. Defendant was present in person and by counsel, Peter J. Steinberg. Also present was Senior United States Probation Officer William T. Badger, Jr.

From the record and defendant's stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on November 13, 1992, following his conviction for conspiracy to distribute a Schedule I controlled substance,

marijuana, in violation of 21 U.S.C. § 846. Defendant's crime was a Class B felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 87 months, with a four-year term of supervised release to follow. Defendant began his term of supervised release on August 3, 1998.

As a special condition of supervised release, defendant was required to abstain from the use and sale of illegal drugs and from association with drug users and sellers and participate in a program of drug counseling and urine surveillance as deemed appropriate by the supervising U.S. probation officer.

On September 8, 2000, the probation office noted in a violation report that defendant had admitted using marijuana after testing positive on a urine sample provided on August 18, 2000. No action was taken because defendant was involved in substance abuse counseling.

On October 11, 2000, in response to defendant's arrest for disorderly conduct and criminal damage to property, I modified the conditions of defendant's release by adding special condition #3, requiring defendant to abstain from the use of alcohol. On August 2, 2001, in response to defendant's positive test for the use of marijuana, I extended defendant's term of supervised release an additional year, which extended his termination date to August 2, 2003. Defendant was also ordered to complete a minimum of one year of outpatient alcohol and drug counseling.

During February 2003, defendant again tested positive for the use of marijuana. A

judicial review hearing was scheduled for August 2, 2003, with the understanding that the hearing would be canceled if there were no additional tests indicating the use of illegal drugs.

Defendant stipulates that he has violated the special condition (#1) of his supervised release requiring him to abstain from the use of illegal drugs, by testing positive for THC metabolite on April 30, May 2, May 9, May 16, May 23 and May 30, 2003. Defendant's conduct falls into the category of Grade C violations, as defined by § 7B1.1(a)(3)(B) of the sentencing guidelines policy statement for violations of supervised release. § 7B1.3(a)(2) provides that upon a finding of a Grade C violation, the court may revoke supervised release, extend the term of supervised release or modify the conditions of supervision. In addition, 18 U.S.C. § 3583(g)(4) directs the court to revoke supervised release if a defendant tests positive for illegal drug use more than three times over the course of a year and there is no available treatment program in the community to warrant an exception under § 3583(d).

### CONCLUSIONS

Defendant's violations require revocation. On August 2, 2001, I informed defendant that any future violations could result in revocation. Defendant was given an additional chance after he tested positive for illegal drug use during February 2003. Defendant did not take advantage of this opportunity and tested positive again for illegal drugs during April and May 2003.

Defendant's original criminal history category at the time of sentencing was II. A Grade C violation paired with a criminal history category II results in a guideline range of 4 to 10 months. Pursuant to 18 U.S.C. § 3583(e)(3), if the offense for which defendant was sentenced previously was a Class B felony, the statutory maximum to which he can be sentenced upon revocation of supervised release is 36 months.

After reviewing the non-binding policy statements in Chapter 7 of the sentencing guidelines, I have selected a sentence below the guideline range. A sentence below the guideline range will hold defendant accountable for his behavior and take into account the positive accomplishments he has made on supervision. This sentence will enable defendant to remain employed, keep his home and provide for his wife and children. I note that defendant volunteers his time in worthwhile projects in the community. However, I cannot excuse any deliberate violation of the law.

#### ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on November 13, 1992, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 30 days. No term of supervised release will follow the sentence of imprisonment. I recommend that defendant serve his 30-day sentence at a facility designated by the Bureau of Prisons nearest his home. If the Bureau determines that defendant should

have work release privileges, I would have no objection.

Defendant does not have the financial means or earning capacity to pay the cost of incarceration.

Defendant is neither a flight risk nor a danger to the community. Therefore, the execution of this sentence is stayed until September 8, 2003, between the hours of 10 a.m. and noon, when defendant is to report to the designated facility to serve his sentence.

Entered this 7th day of August 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge